

Letter of Findings Number: 01-20130122
Income Tax
For The Tax Years 2005-11

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ISSUE

I. Income Tax – Imposition.

Authority: Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); IC § 6-3-2-1; IC § 6-8.1-5-1; IC § 6-8.1-5-2.

Taxpayer protests the imposition of income tax.

STATEMENT OF FACTS

Taxpayer is an Indiana Resident. As the result of an investigation, the Indiana Department of Revenue ("Department") determined that Taxpayer had not filed or paid Indiana individual income tax for the tax years 2005, 2006, 2007, 2008, 2009, 2010, and 2011. The Department therefore issued proposed assessments for individual income tax, penalties, and interest for those years. Taxpayer protests that the Department over-stated the income Taxpayer received as the sole owner of a business and therefore protests a portion of the proposed assessments for individual income tax. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax – Imposition.

DISCUSSION

Taxpayer protests that the Department over-estimated the income Taxpayer received as the sole owner of a business. The Department reviewed the available documentation and determined the amount of Indiana individual income tax that Taxpayer should have remitted for the tax years 2005-11. Primarily, the Department reviewed Taxpayer's business' records to determine the amount of profit which would have then gone to Taxpayer as the sole owner of the business. Taxpayer protests that the Department did not give it enough deductions from its expenses and that the resulting proposed assessments are therefore too high. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

First, the Department refers to IC § 6-3-2-1(a), which states:

Each taxable year, a tax at the following rate of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person:

- (1) For taxable years beginning before January 1, 2015, three and four-tenths percent (3.4[percent]).
- (2) For taxable years beginning after December 31, 2014, and before January 1, 2017, three and three-tenths percent (3.3[percent]).
- (3) For taxable years beginning after December 31, 2016, three and twenty-three hundredths percent (3.23[percent]).

Next, the Department refers to IC § 6-8.1-5-2(f), which states:

If a person files a fraudulent, unsigned, or substantially blank return, or if a person does not file a return, there is no time limit within which the department must issue its proposed assessment.

(Emphasis added).

In this case, Taxpayer did not file Indiana individual income tax returns for the years at issue; therefore, there is no time limit for the Department to issue proposed assessments for that tax for those years.

Under IC § 6-8.1-5-1(b), the Department is authorized to make proposed assessments based on the best information available to it. In its investigation report, the Department noted that Taxpayer's business' bank statements and profit and loss statements were the only documentation available for review. The report also states that the Department gave Taxpayer several opportunities to provide individual income tax returns for the years at issue, but that no returns were provided.

Taxpayer protests that the business used two different bookkeepers during the investigation period and that it used Quickbooks to maintain its books. Taxpayer protests that the Department should allow payments to workers, capital purchases and other expenses subject to use tax as deductions against the business' income. As part of the protest process, Taxpayer delivered five boxes of invoices and bank statements and several spreadsheets. Taxpayer believes that the documentation speaks for itself. Taxpayer is incorrect.

As explained during the hearing and in the Department's letter setting the hearing, the protest process is a taxpayer's opportunity to clearly explain their protest and to provide relevant and cogent supporting documentation. Taxpayer has not presented a sufficiently developed argument for the Department to address.

See *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480, 485 n.9, (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court) (citing *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010)). Taxpayer has not met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

Posted: 10/30/2013 by Legislative Services Agency

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